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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,823	06/20/2003	Mercedes L. Walker Brynton	0022128-0003	9237

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EXAMINER
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GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/600,823

**Applicant(s)**WALKER BRYNTON, MERCEDES  
L.**Examiner**

Jeffrey L. Gellner

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15, 20, 21 and 27-29 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-15, 20, 21, 27-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Invention I: a tree feeder; Species C: Fig. 3 - pipe of 320; and Species b - plastic tie in the paper received 26 February 2004 is acknowledged. Claim 11 is withdrawn to a nonelected species combination due to the language of "pipe are made of metal." Acknowledgement is made of the cancellation of claims 16-19, 22-26, and 30-56.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, line 2, the "said slot" lacks antecedent basis. For purposes of this office action claim 8 is assumed to depend from claim 5.

In claim 14, line 2, the cylindrical and wedge sections are made of metal but this claim depends upon claim 12 where these sections are claims as being made of plastic.

***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 9, 10, 15, and 29 are rejected under 35 U.S.C. §103(a) as being unpatentable over McCurry (US 5,513,677) in view of Frantz (US 5,809,691).

As to Claims 1 and 29, McCurry discloses a tree feeder (Fig. 1) comprising a container (1 of Figs. 1-3); an on/off stopper (9-11 of Fig. 3b) with two ends, one end attached to a bottom end of the container; a pipe (2 of Figs. 1-3b) whose one end is attached to an end of the on/off stopper different from end attached to the container; and, a tie device (7 of Figs. 1-3) for attaching the container to the tree. Not disclosed are three or more attaching devices. Frantz, however, discloses three or more attaching devices (implicit in "tying pieces 12 are located throughout the length of the device at the user's discretion" of col. 3 lines 1-5). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the tree feeder of McCurry by using three or more attaching devices as disclosed by Frantz so as to assure that the device is held in position (see Frantz at col. 3 lines 1-5).

As to Claim 9, McCurry as modified by Frantz further disclose the container, stopper and pipe made of plastic (col. 3 lines 28-29, 54-55; on/off stoppers are known to be made of plastic).

As to Claim 10, the limitations of Claim 9 are disclosed as described above. Not disclosed is the plastic PVC. It would have been obvious to one of ordinary skill in the art at the

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time of the invention to further modify the tree feeder of McCurry as modified by Frantz by using PVC as the plastic depending upon price and availability of materials.

As to Claim 15, McCurry as modified by Frantz further disclose the pipe length is of at least equal length to that of the container (Fig. 1 of McCurry).

Claims 2-8 and 12-14 are rejected under 35 U.S.C. §103(a) as being unpatentable over McCurry (US 5,513,677) in view of Frantz (US 5,809,691) in further view of Bergin (US 5,267,412).

As to Claim 2, the limitations of Claim 1 are disclosed as described above. Not disclosed is the container with a cylindrical shaped section and a wedge shaped solid section with the vertical height of the wedge the same height as the cylindrical section. Bergin, however, discloses a cylindrical section (example, 11 and 12 of Fig. 1; col. 2 lines 15-17) and a wedge section (13 of Fig. 1; col. 2 lines 34-35) the same height as the cylindrical section. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the tree feeder of McCurry as modified by Frantz by having a wedge as disclosed by Bergin so as to camouflage the container (see Bergin at col. 2 lines 34-35).

As to Claims 3 and 4, the limitations of Claim 3 are disclosed as described above. Not disclosed is the cylindrical shaped section having a capacity of 10.6 or 21.1 fluid oz. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the tree feeder of McCurry as modified by Frantz and Bergin by making the cylindrical section a particular capacity so as to meet a particular need of watering convenience.

As to Claim 5, McCurry as modified by Frantz and Bergin further disclose a slot (for example, shown in Fig. 3) running the height of the wedge.

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As to Claims 6 and 7, McCurry as modified by Frantz and Bergin further disclose the slot at an angle of 65° or 70° (depending on how element 13 is attached).

As to Claim 8, the limitations of Claims 1 or 5 are disclosed as described above. Not disclosed are two of attaching devices looped through the slot of the container. McCurry further discloses a attaching device looped though a slot to support the container (7 of Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the tree feeder of McCurry as modified by Frantz and Bergin by adding another attaching device to the container so that the container is more securely fastened.

As to Claims 12 and 13, the limitations of Claim 12 are disclosed as described above. Not disclosed is the cylindrical and wedge portions made of plastic, specifically PVC. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the tree feeder of McCurry as modified by Frantz and Bergin by using plastic, specifically PVC, to make the cylindrical and wedge sections depending upon price and availability of materials.

As to Claims 14, the limitations of Claim 12 are disclosed as described above. Not disclosed is the cylindrical and wedge portions made of plastic, specifically PVC. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the tree feeder of McCurry as modified by Frantz and Bergin by using metal to make the cylindrical and wedge sections depending upon price and availability of materials.

Claims 20 and 21 are rejected under 35 U.S.C. §103(a) as being unpatentable over McCurry (US 5,513,677) in view of Frantz (US 5,809,691) in further view of Cook (US 4,223,702).

As to Claim 20, the limitations of Claim 1 are disclosed as described above. Not disclosed is the pipe being an outer pipe made of a plurality of opaque rigid plastic pieces that telescope and an inner pipe made of transparent bendable plastic. Cook, however, discloses a pipe with an outer pipe (18 of Fig. 1) made of a plurality of opaque rigid plastic pieces (20, 22, 24 of Fig. 1; col. 3 lines 37-39) that telescope and an inner pipe made of transparent bendable plastic (13 of Fig. 1; transparent depending upon the plastic used). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the tree feeder of McCurry as modified by Frantz by using the pipe of Cook so as to prevent leakage (col. 1 lines 60-62).

As to Claim 21, McCurry as modified by Frantz and Cook further disclose the pipe made of opaque, rigid, PVC that telescopes (18 of Fig. 1; col. 3 lines 37-39).

Claims 27 and 28 are rejected under 35 U.S.C. §103(a) as being unpatentable over McCurry (US 5,513,677) in view of Frantz (US 5,809,691) in further view of Foster (US 4,850,137).

As to Claim 27, the limitations of Claim 1 are disclosed as described above. Not disclosed are the ties being plastic. Foster, however, shows ties that are plastic (for example, 14 of Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the tree feeder of McCurry as modified by Frantz by using plastic ties as disclosed by Foster depending upon the price and availability of ties.

As to Claim 28, McCurry as modified by Frantz and Foster further disclose a tie equal to at least the thickness of the tree (see Fig. 1 of Foster; col. 2 lines 30-33 of Foster).

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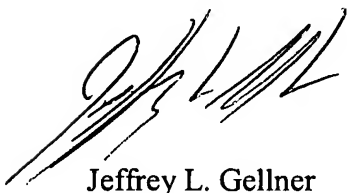
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Evans et al. and Cullen disclose in the prior art various tree feeders with a cylindrical and wedge sections. Barrett disclose in the prior art a telescoping pipe. Walker Brynton discloses the instant application's pre-grant publication.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'Jeffrey L. Gellner', is positioned above the printed name.

Jeffrey L. Gellner